CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 33 JULY 7, 1999 NO. 27

This issue contains:

U.S. Customs Service

T.D. 99–51

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decision

(T.D. 99–51)

CUSTOMS ACCREDITATION OF CHEMICAL AND PETROLEUM INSPECTIONS, INC. AS AN ACCREDITED LABORATORY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Accreditation of Chemical and Petroleum Inspections, Inc. as a Commercial Accredited Laboratory.

SUMMARY: Chemical and Petroleum Inspections, Inc. of Groves, Texas, an approved Customs gauger, has applied to U.S. Customs for accreditation to perform analysis under Part 151.13 of the Customs Regulations (19 CFR 151.13) at their Groves, Texas facility. Customs has determined that Chemical and Petroleum Inspections, Inc. meets all of the requirements for accreditation as a Commercial Laboratory to perform the analyses for Identity and Composition. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Chemical and Petroleum Inspections, Inc., is granted accreditation to perform the analyses listed above.

LOCATION: Chemical and Petroleum Inspections, Inc. accredited site is located at: 5300 39th Street, Groves, Texas 77619.

EFFECTIVE DATE: June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, D.C. 20229 at (202) 927–1060.

Dated: June 16, 1999.

GEORGE D. HEAVEY,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, June 23, 1999 (64 FR 33547)]

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 6–1999)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of May 1999 follow. The last notice was published in the CUSTOMS BULLETIN on May 26, 1999.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Acting Chief, Intellectual Property Rights Branch, (202) 927–2330.

Dated: June 23, 1999.

MICHAEL SMITH,
Acting Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

06/01/99 U.S. CUSTOMS SERVICE PAGE 1
12:41:18 IPR RECORDATIONS ADDED IN MAY 1999 DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP9900080	19990504	20190504	TY INC. 1998 HOLIDAY TEDDY #4204	TY INC.	N
COP9900081	19990504	20190504	TY INC. BEAK #4211	TY INC.	N
COP9900082	19990505	20190505	SUBTLETIES	CONGOLEUM CORPORATION	N
COP9900083	19990505	20190505	MINI CHILLA CHILLA	TRENDMASTERS INC.	N
COP9900084	19990505	20190505	LARGE CHILLA CHILLA	TRENDMASTERS INC.	N
COP9900085	19990507	20190507	BLUE'S CLUES-EPISODE #1	VIACOM INTERNATIONAL INC.	N
COP9900086	19990511	20190511	TY INC. CANYON #4212	TY INC.	N
COP9900087	19990511	20190511	TY INC. HALO #4208	TY INC.	N
COP9900088	19990511	20190511	TY INC. LOOSY #4206	TY INC.	N
COP9900089	19990511	20190511	TY INC. PUMKIN #4205	TY INC.	N
COP9900090	19990511	20190511	TY INC. ROAM #4209	TY INC.	N
COP9900091	19990511	20190511	TY INC. SANTA #4203	TY INC.	N
COP9900092	19990511	20190511	TY INC. SCORCH #4210	TY INC.	N
COP9900093	19990511	20190511	TY INC. ZERO #4207	TY INC.	N
COP9900094	19990518	20190518	PIC 16CXXX MIDRANGE MICROCODE	MICROCHIP TECHNOLOGY INCORPORATE	N
COP9900095	19990518	20190518	ANIMAL BEADS: PENGUIN, POLAR BEAR, ARMUDIILO. HORSE	J. P. IMPORTED	N
COP9900096	19990518	20190518	ANIMAL BEADS: BROWN LABRADOR, GOLDEN LABRADOR, BLACK	J. P. IMPORTED	N
COP9900097	19990518	20190518	ANIMAL BEADS: BEES, ORCA WHALE, SEAHORSE, BLACK BEAR	J. P. IMPORTED	N
COP9900098	19990518	20190518	ANIMAL BEADS: HORSE HEAD, WOLF FACE, PIG-PINK,	J. P. IMPORTED	N
COP9900099	19990518	20190518	MANATEE, BROWN BAT, BLACK BAT, RAT, GRASSHOPPER	J. P. IMPORTED	N
COP9900100	19990518	20190518	ANIMAL BEADS: SHARK, SEAL	J. P. IMPORTED	N
COP9900101	19990518	20190518	ANIMAL BEADS: GECKO-BROWNSPOTTED, GECK GREY-SPOTTED	J. P. IMPORTED	N
COP9900102	19990518	20190518	PIC16C5X MICROCODE	MICROCHIP TECHNOLOGY INCORPORATE	N
COP9900103	19990518	20190518	STAR WARS: EPISODE I-THE PHANTOM MENACE: FINAL TRAILER	LUCASFILM LTD.	N
COP9900104	19990518	20190518	TRAILER; STAR WARS: EPISODE ONE -THE PHANTOM MENACE	LUCASFILM LTD.	N
COP9900105	19990519	20190519	FLYING SEAGULL PACKAGING	MAGICAL KEY INTERNATIONAL CO.	N
COP9900106	19990519	20190519	FLYING SEAGULL TOY	MAGICAL KEY INTERNATIONAL CO.	N
COP9900107	19990520	20190520	POWER RANGERS LOST GALAXY-STYLE GUIDE	SABAN ENTERTAINMENT INC.	N
COP9900108	19990527	20190527	MARIO PARTY (N64)	NINTENDO OF AMERICA INC.	N
SUBTOTAL RECORDATION TYPE			29		
TMK9900182	19990505	20000508	AIRPRENE	AIRPRENE, LLC	N
TMK9900183	19990510	20081222	WILDECK & DESIGN	WILDECK INC.	N
TMK9900184	19990510	20080706	ARTUS	THE ARTUS CORPORATION	N
TMK9900185	19990510	20011224	MISCELLANEOUS DESIGN	THE ARTUS CORPORATION	N
TMK9900186	19990510	20011224	MISCELLANEOUS DESIGN	THE ARTUS CORPORATION	N
TMK9900187	19990510	20011231	MISCELLANEOUS DESIGN	THE ARTUS CORPORATION	N
TMK9900188	19990510	20081208	MISCELLANEOUS DESIGN	THE ARTUS CORPORATION	N
TMK9900189	19990517	19991204	STAR WARS	LUCAS LICENSING LTD.	N
TMK9900190	19990518	20081201	EFS REVOLUTION	EARL F. SMITH	N
TMK9900191	19990519	20060227	DOUBLE LATERN BRAND & DEVICE	FUJIAN CEREALS, OILS & FOODSTUFF	N
TMK9900192	19990519	20081027	WHITE MOUNTAIN	JEAN LAVALLEE	N
TMK9900193	19990520	20090223	DANGER MEN COOKING	ANDE ROONEY INC.	N
TMK9900194	19990520	20090302	DANGER MEN COOKING	ANDE ROONEY INC.	N
TMK9900195	19990520	20081013	DANGER MEN COOKING	ANDE ROONEY INC.	N
TMK9900196	19990520	20090223	FURBY	TIGER ELECTRONICS INC.	N
TMK9900197	19990520	20070819	DIGITAL LIGHT	DIGITAL LIGHT INC.	N
TMK9900198	19990522	20050618	MERIDIAN	NORTHERN TELECOM LIMITED	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9900199	19990522	20081018	NORSTAR & DESIGN	NORTHERN TELECOM LIMITED	N
TMK9900200	19990522	20010723	MERIDIAN 1	NORTHERN TELECOM LIMITED	N
TMK9900201	19990522	20020407	MERIDIAN SL	NORTHERN TELECOM LIMITED	N
TMK9900202	19990522	20021124	NORSTAR	NORTHERN TELECOM LIMITED	N
TMK9900203	19990524	20040628	CONFIGURATION OF THE BODY PORTION OF AN ACOUSTIC GUITAR	KAMAN MUSIC CORPORATION	N
TMK9900204	19990524	20031011	LEAF LIKE DESIGN	KAMAN MUSIC CORPORATION	N
TMK9900205	19990524	20040903	DESIGN OF GUITAR PARTS	KAMAN MUSIC CORPORATION	N
TMK9900206	19990525	20090302	BIG BERTHA X-12 IRONS MEDALLION	CALLAWAY GOLF COMPANY	N
TMK9900207	19990525	20090223	ROSSIE	ODYSSEY GOLF	N
TMK9900208	19990525	20070728	STUSSY (STYLIZED)	STUSSY, INC.	N
TMK9900209	19990525	20080728	STUSSY	STUSSY, INC.	N
TMK9900210	19990525	20080221	CALVIN KLEIN	CALVIN KLEIN, INC.	N
TMK9900211	19990525	20080929	CALVIN KLEIN STYLIZED	CALVIN KLEIN TRADEMARK TRUST	N
TMK9900212	19990525	20080317	CALVIN KLEIN (STYLIZED)	CALVIN KLEIN TRADEMARK TRUST	N
TMK9900213	19990525	20090226	KABLAM	STATE LINE SPARKLER, WEST VIRGIN	N
TMK9900214	19990527	20080310	COLORADO RAPIDS	MAJOR LEAGUE SOCCER L.L.C.	Y
TMK9900215	19990527	20080106	DALLAS BURN (STYLIZED LETTERS)	MAJOR LEAGUE SOCCER L.L.C.	Y
TMK9900216	19990527	20080310	D.C. UNITED	MAJOR LEAGUE SOCCER L.L.C.	Y
TMK9900217	19990527	20080106	TAMPA BAY MUTINY	MAJOR LEAGUE SOCCER L.L.C.	Y
TMK9900218	19990527	20070311	ADVANTAGE	BAYER CORPORATION	N
TMK9900219	19990527	20060326	HR HALDIRAM'S AND DESIGN	HALDIRAM INDIA PTY., LTD.	N
TMK9900220	19990527	20090302	SSRC	AMSTED INDUSTRIES INCORPORATED	N
TMK9900221	19990527	20090302	SSRM	AMSTED INDUSTRIES INCORPORATED	N
TMK9900222	19990527	20090302	ASF-FOT	AMSTED INDUSTRIES INCORPORATED	N
TMK9900223	19990527	20090302	SSRIM	AMSTED INDUSTRIES INCORPORATED	N
TMK9900224	19990527	20080915	RIVET KING AND DESIGN	INDUSTRIAL RIVET & WASHER CO.	Y
TMK9900225	19990527	20080929	RIVET KING	INDUSTRIAL RIVET & WASHER CO.	Y
TMK9900226	19990527	20081006	MISCELLANEOUS DESIGN	INDUSTRIAL RIVET & WASHER CO.	Y
TMK9900227	19990527	20090216	NATIONAL GYPSUM AND DESIGN	NATIONAL GYPSUM COMPANY	N
TMK9900228	19990528	20020111	GRABBER	JOHN WAGNER ASSOCIATES INC.	N
TMK9900229	19990528	20050225	STREAKER	JOHN WAGNER ASSOCIATES INC.	N
TMK9900230	19990528	20040807	DESIGN ON THE HEAD OF A SCREW	JOHN WAGNER ASSOCIATES INC.	N
TMK9900231	19990528	20000731	GRABBER	JOHN WAGNER ASSOCIATES INC.	N
TMK9900232	19990528	20090117	GRABBER	JOHN WAGNER ASSOCIATES INC.	N
TMK9900233	19990528	20020413	MEN WITH SCREW IN HIS CHEST AND DESIGN	JOHN WAGNER ASSOCIATES INC.	N
TMK9900234	19990528	20080207	IMPACT	JOHN WAGNER ASSOCIATES INC.	N
TMK9900235	19990528	20060520	HEAT TREAT	JOHN WAGNER ASSOCIATES INC.	N
TMK9900236	19990528	20030410	THE GRABBER WITH SCREW DESIGN LINE	JOHN WAGNER ASSOCIATES INC.	N
TMK9900237	19990528	20090110	ZANELLA	ZANELLA LIMITEDA	N
TMK9900238	19990528	20060813	ZANELLA	ZANELLA LIMITEDA	N
TMK9900239	19990528	20090228	ZANELLA	ZANELLA LIMITEDA	N
TMK9900240	19990528	20080829	ANCO	COOPER AUTOMOTIVE PRODUCTS, INC.	N

SUBTOTAL RECORDATION TYPE 59

TOTAL RECORDATIONS ADDED THIS MONTH 88

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 23, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PORTABLE WORKBENCHES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters, and treatment relating to the classification of portable workbenches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of portable workbenches and any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 6, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Richard Romero, Attorney-Advisor, Office of Regulations and Rulings at 202–927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify three rulings pertaining to the tariff classification of portable workbenches. Customs has undertaken reasonable efforts to search existing data bases for rulings, in addition to the ones identified. Although in this notice Customs is specifically referring to three rulings, New York Ruling (NY) 866269 (September 9, 1991), NY 888760 (August 2, 1993) and NY 895283 (March 8, 1994), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment which it previously accorded to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to this notice.

In NY 866269, dated September, 9, 1991 (Attachment A), Customs classified a portable workbench/vise, which was described as "two longitudinal pieces with indentations and a mounted vise * * * the top (sur-

face of the workbench) are made of plastic." This article was intended for nonprofessional use in and around the home.

In NY 888760, dated August 2, 1993 (Attachment B), Customs classified a portable workbench and vise, which was described as follows: a work-top consisting of two moveable pieces of wood that can also act as a vice, two side braces with plastic crank handles, two bottom cross bars, two sets of leg frames, four rubber foot pads and four plastic insert chucks * * * It has no metal working edge. Except for the wooden top and several minor pieces, the item is made of steel." This article was intended for nonprofessional use in and around the home.

In NY 895283, dated March 8, 1994 (Attachment C), Customs classified the Black & Decker Workmate 400, which was described as "a folding work table with a steel frame and legs. The top of the table has a wooden, two-piece design that enables it to be used as a workbench, sawhorse or vise." This article was intended for nonprofessional use in and around the home.

In all three rulings the articles was classified in subheading 7323.99.90, HTSUS, which provides for "[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel; Other: Other: Other: Other."

The foregoing rulings reflect the Customs former belief that portable workbenches are classified in heading 7323, HTSUS, covering "household articles" because they are used solely in households. However, when the Harmonized System Committee (HSC) of the World Customs Organization, of which the U.S. is a member, took up the issue of the classification of portable workbenches at its 19th Session in March, 1997 (See HSC/19 Doc. 41.100E, April , 1997), it became clear that portable workbenches are also used in the workshops of mechanics, carpenters, plumbers, electricians, and in various handicraft workshops, which cannot be regarded as "households" within the meaning of heading 7323, Harmonized System (HS) (See HSC/19 Doc. 41.104E, March 26, 1997). For this reason, the HSC determined that classification in heading 7323, HS, was precluded, and, instead, classified the articles in heading 7326, HS, covering "[o]ther articles of iron or steel." A classification opinion to that effect was published in the HS Compendium of Classification Opinions in November, 1997. See HSC/20 Doc. 41.289E, May 29, 1997, and HSC/20 Doc. 41.600E, Annex E/14, November 21, 1997.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. A decision of the HSC published in the Compendium of Clas-

sification Opinions should receive the same weight as the ENs. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In consideration of the factual findings of the HSC, the U.S. has reconsidered the classification of these portable workbenches. Since the articles are used in venues other than the "household," Customs no longer believes that they are classified in heading 7323, HTSUS. Rather, we are now of the opinion that these portable workbenches are classified in subheading 7326.90, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 866269, NY 888760, NY 895283, and any other Customs ruling that may exist which has not been specifically identified, to reflect the proper classification of the portable workbenches pursuant to the analysis set forth in proposed HQ 961000, 962989, and 962990. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment which it previously accorded to substantially identical transactions. Proposed HQ 961000, 962989, and 962990 are set forth as attachments "D", "E", and "F" to this document. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 16, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, September 9, 1991.

CLA–2–73:S:N:N1:113 866269
Category: Classification
Tariff No. 7323.99.9080

MS. MICHELE I. SMITH
SEARS, ROEBUCK AND CO.
Department 733IMP
BSC 23–11
Sears Tower
Chicago, IL 60784

Re: The tariff classification of portable workbench/vise from Taiwan.

DEAR MS. SMITH:

In your letter dated July 31, 1991, you requested a tariff classification ruling.

The merchandise is a folding work table with steel legs and frame. The top consists of two longitudinal pieces with indentations and a mounted vise. In a telephone call on September 4th you revealed that the top and the vise is made of plastic. The item is of a type designed to be used principally in the home by home handymen and not designed to withstand the abuse of professional use.

The applicable subheading for the workbench will be 7323.99.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for table, kitchen and other household articles. The rate of duty will be 3.4% ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, August 2, 1993.

CLA–2–73:S:N:N3:113 888760
Category: Classification
Tariff No. 7323.99.9000

MS. JACQUELINE A. BONACE
BLAIR CORPORATION
220 Hickory Street
Warren, PA 16366–0001

Re: The tariff classification of workbenches from Taiwan.

DEAR MS. BONACE:

In your letter dated July 20, 1993, you requested a tariff classification ruling.

The merchandise is the Portable Workbench & Vice, product code WBNCH13. It is constructed of a work top consisting of two moveable wooden pieces that can also act as a vise, two side braces with plastic crank handles, two bottom cross bars, two sets of leg frames, four rubber foot pads and four plastic insert chucks. The workbench is imported unassembled. It has no metal working edge. Except for the wooden top and several minor pieces, the item is made of steel. The item is regularly sold to home craftsmen for projects in and around the house.

The applicable subheading for the workbench will be 7323.99.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for table, kitchen or other household articles, of iron or steel, other. The rate of duty will be 3.4 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 8, 1994.

CLA–2–73:S:N:N3:113 895283
Category: Classification
Tariff No. 7323.99.9000

MR. STEVEN D. KELSO
TOWER GROUP INTERNATIONAL, INC.
205 West Service Road
Champlain, NY 12919–0218

Re: The tariff classification of the Black & Decker Workmate from Canada.

DEAR MR. KELSO:

In your letter dated February 25, 1994, on behalf of Black & Decker (U.S.) Inc., you requested a tariff classification ruling.

The merchandise is the Black & Decker Workmate 400. The item is a folding work table with a steel frame and legs. The top of the table has wooden, two-piece design that enables it to be used as a workbench, sawhorse or vise. The Workmate is designed to be used in and around the home by home handymen.

The applicable tariff provision for the Workmate will be 7323.99.9000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for table, kitchen or other household articles and parts thereof, of iron or steel. The general rate of duty will be 3.4 percent ad valorem.

Certain goods of Canada classifiable under heading 7323.99.9000, under the terms of General Note 12 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), receive a temporary modification of rate for goods entered through the close of December 31, 1998. The tariff provision for the Workmate under this modification will be 9905.73.20, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for portable workbenches with wooden surfaces (provided for in subheading 7323.99.90 or 7326.9090). The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 961000 RTR
Category: Classification
Tariff No. 7326.90

MR. STEVEN D. KELSO
TOWER GROUP INTERNATIONAL, INC.
205 West Service Road
Champlain, NY 12919–0218

Re: Portable workbenches; NY 895283 revoked.

DEAR MR. KELSO:

This is in reference to NY 895283, which was issued to you on March 8, 1994, in response to your letter dated February 25, 1994, on behalf of Black & Decker (U.S.), Inc., concerning

the tariff classification of the Black & Decker Workmate 400 ("Workmate") under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and have determined that it no longer reflects Customs position. Accordingly, it is being revoked.

Facts:

In NY 895283, Customs classified the Black & Decker Workmate 400 in subheading 7323.99.90, HTSUS. The article was described as "a folding work table with a steel frame and legs. The top of the table has a wooden, two-piece design that enables it to be used as a workbench, sawhorse or vise." The article was intended for nonprofessional use in and around the home.

The HTSUS provisions under consideration are as follows:

7323		Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.
		Other:
7323.99		Other:
		Other:
7323.99.90		Other:
*	*	* * * * *
7326		Other articles of iron or steel
7326.90		Other

Issue:

Whether portable workbenches are "household goods" of heading 7323, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that, for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In a series of rulings, including NY 895283, Customs classified portable workbenches in heading 7323, HTSUS, covering "household articles" because we were of the opinion that they were used solely in households.

However, in its 19th Session in March, 1997, the Harmonized System Committee (HSC), of which the U.S. is a member, considered the issue of portable workbenches. Submissions from various customs administrations provided Customs with greater information on the venues in which these articles are used. It became clear that portable workbenches are also used in the workshops of mechanics, carpenters, plumbers, electricians, and in various handicraft workshops, which cannot be regarded as "households" within the meaning of heading 7323, Harmonized System (HS) (See HSC/19 Doc. 41.104E, March 26, 1997). For this reason, the HSC determined that classification in heading 7323, HS, was precluded, and, instead, classified the articles in heading 7326, HS, covering "[o]ther articles of iron or steel." A classification opinion to that effect was published in the HS Compendium of Classification Opinions in November, 1997. See HSC/20 Doc. 41.289E, May 29, 1997, and HSC/20 Doc. 41.600E, Annex E/14, November 21, 1997.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. A decision of the HSC published in the Compendium of Classification Opinions it should receive the same weight as the ENs. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In consideration of the factual findings of the HSC, the U.S. has reconsidered the classification of these portable workbenches. Since the articles are used in venues other than the "household," Customs no longer believes that they are classified in heading 7323, HTSUS. Rather, we are now of the opinion that these portable workbenches are classified in subheading 7326.90, HTSUS.

Holding:

By application of GRI 1, these portable workbenches are classified in subheading 7326.90, HTSUS, which covers "[o]ther articles of iron or steel: [o]ther." Accordingly, NY 895283 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 962989 RTR
Category: Classification
Tariff No. 7326.90

MS. JACQUELINE A. BONACE
BLAIR CORPORATION
220 Hickory Street
Warren, PA 16366-0001

Re: Portable workbenches with a vise; NY 888760 revoked.

DEAR MS. BONACE:

This is in reference to NY 888760, which was issued to you on August 2, 1993, in response to your letter dated July 20, 1993, concerning the tariff classification of portable workbenches with a vise, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and have determined that it no longer reflects Customs position. Accordingly, it is being revoked.

Facts:

In NY 888760, Customs classified the portable workbenches with a vise in subheading 7323.99.90, HTSUS. The article was described as "a work-top consisting of two moveable pieces of wood that can also act as a vice, two side braces with plastic crank handles, two bottom cross bars, two sets of leg frames, four rubber foot pads and four plastic insert chucks * * * It has no metal working edge. Except for the wooden top and several minor pieces, the item is made of steel." This article was intended for nonprofessional use in and around the home.

The HTSUS provisions under consideration are as follows:

7323		Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.
		Other:
7323.99		Other
		Other:
7323.99.90		Other.
*	* * * * * * *	
7326		Other articles of iron or steel
7326.90		Other

Issue:

Whether portable workbenches with a vise are "household goods" of heading 7323, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that, for legal purposes, classification shall be

determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In a series of rulings, including NY 888760, Customs classified portable workbenches in heading 7323, HTSUS, covering "household articles" because we were of the opinion that they were used solely in households.

However, in its 19th Session in March, 1997, the Harmonized System Committee (HSC) of the World Customs Organization, of which the U.S. is a member, considered the issue of portable workbenches. Submissions from various customs administrations provided Customs with greater information on the venues in which these articles are used. It became clear that portable workbenches are also used in the workshops of mechanics, carpenters, plumbers, electricians, and in various handicraft workshops, which cannot be regarded as "households" within the meaning of heading 7323, Harmonized System (HS) (See HSC/19 Doc. 41.104E, March 26, 1997). For this reason, the HSC determined that classification in heading 7323, HS, was precluded, and, instead, classified the articles in heading 7326, HS, covering "[o]ther articles of iron or steel." A classification opinion to that effect was published in the HS Compendium of Classification Opinions in November, 1997. See HSC/20 Doc. 41.289E, May 29, 1997, and HSC/20 Doc. 41.600E, Annex E/14, November 21, 1997.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. A decision of the HSC published in the Compendium of Classification Opinions it should receive the same weight as the ENs. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In consideration of the factual findings of the HSC, the U.S. has reconsidered the classification of these portable workbenches. Since the articles are used in venues other than the "household," Customs no longer believes that they are classified in heading 7323, HTSUS. Rather, we are now of the opinion that these portable workbenches are classified in subheading 7326.90, HTSUS.

Holding:

By application of GRI 1, portable workbenches with a vise are classified in subheading 7326.90, HTSUS, which covers "[o]ther articles of iron or steel: [o]ther." Accordingly, NY 888760 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962990 RTR
Category: Classification
Tariff No. 7326.90

MS. MICHELE SMITH
SEARS, ROEBUCK AND CO.
Department 733IMP
BSC 23–11
Sears Tower
Chicago, IL 60784

Re: Portable workbenches with a vise; NY 866269 revoked.

DEAR MS. SMITH:

This is in reference to NY 866269, which was issued to you on September 9, 1991, in response to your letter dated July 31, 1991, concerning the tariff classification of portable

workbenches with a vise, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and have determined that it no longer reflects Customs position. Accordingly, it is being revoked.

Facts:

In NY 866269, Customs classified the portable workbenches with a vise in subheading 7323.99.90, HTSUS. The article was described as "two longitudinal pieces with indentations and a mounted vise * * * the top (surface of the workbench) and the vise are made of plastic." This article was intended for nonprofessional use in and around the home.

The HTSUS provisions under consideration are as follows:

7323		Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.
		Other:
7323.99		Other
		Other:
7323.99.90		Other:
*	*	* * * * * * *
7326		Other articles of iron or steel
7326.90		Other

Issue:

Whether portable workbenches with a vise are "household goods" of heading 7323, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that, for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In a series of rulings, including NY 866269, Customs classified portable workbenches in heading 7323, HTSUS, covering "household articles" because we were of the opinion that they were used solely in households.

However, in its 19th Session in March, 1997, the Harmonized System Committee (HSC) of the World Customs Organization, of which the U.S. is a member, considered the issue of portable workbenches. Submissions from various customs administrations provided Customs with greater information on the venues in which these articles are used. It became clear that portable workbenches are also used in the workshops of mechanics, carpenters, plumbers, electricians, and in various handicraft workshops, which cannot be regarded as "households" within the meaning of heading 7323, Harmonized System (HS) (See HSC/19 Doc. 41.104E, March 26, 1997). For this reason, the HSC determined that classification in heading 7323, HS, was precluded, and, instead, classified the articles in heading 7326, HS, covering "[o]ther articles of iron or steel." A classification opinion to that effect was published in the HS Compendium of Classification Opinions in November, 1997. See HSC/20 Doc. 41.289E, May 29, 1997, and HSC/20 Doc. 41.600E, Annex E/14, November 21, 1997.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. A decision of the HSC published in the Compendium of Classification Opinions it should receive the same weight as the ENs. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In consideration of the factual findings of the HSC, the U.S. has reconsidered the classification of these portable workbenches. Since the articles are used in venues other than the "household," Customs no longer believes that they are classified in heading 7323, HTSUS. Rather, we are now of the opinion that these portable workbenches are classified in subheading 7326.90, HTSUS.

Holding:

By application of GRI 1, these portable workbenches with a vise are classified in subheading 7326.90, HTSUS, which covers "[o]ther articles of iron or steel: [o]ther." Accordingly, NY 866269 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF FOOTWEAR WITH TRACTION DOTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to tariff classification of women's shoe with traction dots.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (P.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a women's leather shoe with rubber traction dots on the sole under the Harmonized Tariff Schedule of the United States (HTSUS), and any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed revocation.

DATE: Comments must be received on or before August 6, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, Textiles Branch (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "in-

formed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (P.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a women's slip on plastic upper shoe with leather sole and rubber traction dot inserts. Although in this notice Customs is specifically referring to one ruling, HQ 081588, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In HQ 081588, dated July 11, 1988, set forth as Attachment A, Customs classified Bally's women's shoe with embossed plastic upper, leather linings and trim, and leather sole with rubber plug inserts un-

der subheading 6405.90.9000, Harmonized Tariff Schedule of the United States Annotated, HTSUSA, as other footwear. The merchandise is a women's closed toe, closed back slip-on with an embossed plastic upper, leather trim collar, and leather tassels across the vamp. The shoe has a 1/2-inch wood wedge, rubber heel, and a leather sole with 14 rubber plugs inserted through holes in the leather. Each of the rubber plugs is approximately 1/4-inch in diameter and 1/8-inch thick, with about 1/32 of an inch projecting beyond the surface of the leather sole.

It is now Customs position that the instant footwear described above is properly classified under subheading 6402.99.3060, HTSUSA, as other footwear with outer soles and uppers of rubber or plastics, footwear of the slip-on type, for women.

Customs intends to revoke HQ 081588, and any other ruling not specifically identified, in order to classify this merchandise under subheading 6402.99.3060, HTSUSA. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 962713, revoking HQ 081588, is set forth as Attachment B to this document.

Dated: June 17, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 11, 1988.

CLA-2:CO:R:C:G 081588 SR 826075
Category: Classification
Tariff No. 6405.90.90

MR. PAUL CATERINA
BALLY INCORPORATED
One Bally Place
New Rochelle, NY 10801

Re: Classification of shoe with embossed plastic upper, leather linings and trim, and leather sole with rubber plug inserts.

DEAR MR. CATERINA:

This letter is in reference to your inquiry of October 27, 1987, as to the classification of a woman's shoe (your item #3030) under the proposed Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was submitted.

Facts:

The sample in question is a woman's closed toe, closed back slip-on with an embossed plastic upper, leather trim collar, and leather tassels across the vamp. The shoe has a

1/2-inch wood wedge, rubber heel, and a leather sole with 14 rubber plugs inserted through holes in the leather. Each of the rubber plugs is approximately 1/4-inch in diameter and 1/8-inch thick, with about 1/32 of an inch projecting beyond the surface of the leather sole.

Issue:

Whether the outer sole of the shoe is the rubber plugs or the leather sole.

Law and Analysis:

Subheading 6402.99.30, HTSUSA, provides for footwear with outer soles and uppers of rubber or plastics, footwear, of the slip-on type, that is held to the foot without the use, of fasteners. Subheading 6405.90.90, HTSUSA, provides for other footwear.

"Outer sole" is defined, as used in headings 64.01–64.05, HTSUSA, in Chapter 64 of the *Harmonized System and Nomenclature Explanatory Notes*, General Explanatory Note (c). It defines the term as meaning, "that part of the footwear, (other than an attached heel) which, when in use is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments which partly cover the sole * * *".

Headquarters Ruling Letter (HRL), 081150, dated November 5, 1987, involved a child's slipper consisting of a textile sole with rubber/plastic traction dots. The rubber dots in this case were approximately 1/8 inch in diameter and less than 1/32-inch thick. It was decided in this ruling that both the rubber dots and the textile material making up the rest of the sole come in contact with the ground.

The shoes at issue are similar to the childrens' slippers, however, they have a harder leather sole rather than textile material. It was shown by putting ink on the leather part of the sole and applying pressure that when weight is put on the shoes in question the leather part of the sole touches the ground. "When in use" the leather part of the sole will touch the ground not only between the dots but also along the front sides and in the toe area where there are no rubber dots, depending on the walking style of the person wearing the shoe.

This would make the outer sole of the shoe both leather and rubber, classifiable by whichever had the most contact with the ground. However, the Explanatory Material also stated that no account should be taken of attached accessories or reinforcements such as spikes, protectors or similar attachments which partly cover the sole. The rubber dots appear to be the type of accessory which is exempt from being included as part of the sole. They are in the nature of spikes and it would seem that they are meant to protect the wearer from slipping (also the purpose of spikes) as well as to protect the leather from wear.

Holding:

The outer sole of this shoe is leather. Therefore this shoe should be classified under subheading 6405.90.90, HTSUSA, as other footwear with duty at the rate of 12.5 percent ad valorem. This classification represents the present position of the Customs Service regarding the dutiable status of the merchandise under the proposed HTSUSA. If there are changes before enactment this advice may not continue to be applicable.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TX 962713 gah
Category: Classification
Tariff No. 6402.99.3060

MR. PAUL CATERINA
BALLY INCORPORATED
One Bally Place
New Rochelle, NY 10801

Re: Revocation of HQ 081588; classification of shoe with embossed plastic upper, leather linings and trim, and leather sole with rubber plug inserts.

DEAR MR. CATERINA:

This is in regard to HQ ruling (HQ) 081588 that was issued to you on July 11, 1988, which addressed the tariff classification of a women's shoe under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling in light of a matter currently before us on similar merchandise and have determined that HQ 081588 is incorrect. Therefore, this ruling revokes HQ 081588 and sets forth the correct classification for the shoe.

Facts:

The merchandise is a women's closed toe, closed back slip-on with an embossed plastic upper, leather trim collar, and leather tassels across the vamp. The shoe has a 1/2-inch wood wedge, rubber heel, and a leather sole with 14 rubber plugs inserted through holes in the leather. Each of the rubber plugs is approximately 1/4-inch in diameter and 1/8-inch thick, with about 1/32 of an inch projecting beyond the surface of the leather sole.

Customs classified the shoe in subheading 6405.90.90, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other footwear.

Issue:

Are the rubber plugs, sometimes known as traction dots, within the meaning of chapter 64 note 4(b) *attachments* to the outer sole, and therefore excluded from consideration in determining the constituent material of the outer sole?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according to the terms of the headings and any relative legal notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

Chapter 64, note 4(b) states that the constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments. The Explanatory Notes (EN) to the chapter indicate that the outer sole is that part of the footwear which, when in use, is in contact with the ground. An attached heel is not included when considering the portion of the shoe which contacts the ground.

In HQ 962500 we considered whether or not traction dots on an outer sole are functionally similar to the note 4(b) exemplars such as spikes, and therefore excluded from consideration when determining the constituent material of the outer sole. It was argued that rubber traction dots provide traction and protection when surfaces are slippery, and that the note 4(b) exemplars function in the same way.

The primary text at issue in note 4(b) to chapter 64, *having the greatest surface area in contact with the ground,* requires consideration of the outer surface of the outer sole because those materials alone are in contact with the ground. In furtherance of the legal requirement, EN (C) to chapter 64 adds that *attached* accessories or reinforcements should be disregarded *which partly cover the sole*. We interpret this guidance to mean that all of the exemplars described as accessories or reinforcements *cover* outer sole material. Such attachments would only be in issue if they were covering material that would otherwise contact the ground. As an example, the EN mentions an attached heel. When taken together,

note 4(b) and EN(C) indicate that the focus of the constituent material determination is the outer sole itself, and the outer surface of the outer sole. Only if accessories and reinforcements are attached to the outer surface of the otherwise complete outer sole does the focus turn to whether they function as an accessory or reinforcement to the outer sole.

In the instant shoe, the traction dots protrude though holes in the leather of the outer sole. Applying the legal standard and the EN guidance discussed above, the rubber traction dots are not attached to the outer surface of the outer sole. Rather, they form part of the complete outer sole's outer surface and are not excluded from the constituent material determination. The rubber is the constituent material having the greatest surface area when the outer sole is in contact with the ground.

Heading 6402 covers other footwear with outer soles and uppers of rubber or plastics. Heading 6405 covers other footwear. Within the meaning of note 4(b), the shoe has an upper of plastics and an outer sole of rubber. Therefore, heading 6402 describes the merchandise.

Holding:

The instant shoe is properly classified in subheading 6402.99.3060, HTSUSA, as other footwear with outer soles and uppers of rubber or plastics, footwear of the slip-on type, for women. The rate of duty is 37.5 percent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF A SEAT PART

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of classification ruling letter and treatment relating to the classification of a seat part.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a seat part used in car seats and any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 6, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Branch, (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and fights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a part for a knitted fastener. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) D81272, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as mended by section 623 of title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the pan of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY D81272, dated August 20, 1998, the classification of a product referred to as a rectangularly shaped polyester knit fabric intended for

use in automobile seats was determined to be in heading 6001, HTSUS. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of this ruling Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY D81272, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 962484 *(see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 17, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, August 20, 1998.

CLA–2–60:RR:NC:TA:351 D81272
Category: Classification
Tariff No. 6001.92.0040

MR. MICHAEL MAROGIL
NNR AIRCARGO SERVICE (USA), INC.
345 Richert Road
Wood Dale, IL 60191

Re: The tariff classification of a knit pile fabric from Japan.

DEAR MR. MAROGIL:

In your letter dated August 7, 1998 you requested a classification ruling.

You have submitted a sample of knit fabric of pile construction which you state is a rectangular piece of foam measuring 200 by 300 mm laminated to a 100% polyester knit fabric with polypropylene projection. The fabric is the hook side of a hook and loop system. The fabric appears to be of warp knit construction. The fabric, as presented, is a simple rectangle, not further made up.

The applicable subheading for the fabric will be 6001.92.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted; other; of man-made fibers, other, other. The rate of duty will be 18.6 percent ad valorem.

The fabric falls within textile category 224. Based upon international textile trade agreements products of Japan are subject to the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa requirements applicable to the subject merchandise may be affected. Part categories are

the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (restrain Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille Ferraro at 212–466–5885.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 962484 jb
Category: Classification
Tariff No. 9401.90.1080

ROGER BANKS, ESQ.
BANKS & ASSOCIATES
1155 Connecticut Ave, N.W., Suite 400
Washington, DC 20036

Re: Revocation of NY D81272; classification of "part for knitted fastener".

DEAR MR. BANKS:

This is in response to your letter, dated November 18, 1998, and subsequent submissions, dated March 10, 1999, and May 6, 1999, on behalf of your client, Moriden America Inc., requesting reconsideration of New York Ruling Letter (NY) D81272, dated August 20, 1998, which classified certain merchandise composed of foam and fabric in heading 6001, ionized Tariff Schedule of the United States, (HTSUS). This heading provides for, among other things, pile fabrics. A sample of the subject merchandise, including a part of a foam automobile seat cushion, and accompanying sketch, were submitted to this office for examination.

Facts:

The submitted merchandise consists of what you describe as a rectangular piece of blue foam measuring 200 X 300 mm, laminated to a 100 percent polyester knit fabric with polypropylene projection. The fabric is similar to the hook side of a "hook and loop" type fastening system. In your letter you refer to this merchandise as being part of an automobile seat assembly, and submit both a sketch and a foam automobile seat cushion which show how the subject merchandise is intended to fit in the recess of the back portion of an automobile seat. The corresponding piece of the "hook and loop" system is attached to the inside of the fabric seat cover to ensure that the seat cover fabric conforms to the shape of the automobile seat, eliminating any air space from occurring between the cushion and the cover. You indicate that this merchandise is made to the specifications of the automobile seat manufacturer prior to importation.

It is your opinion that the proper classification for this merchandise is in heading 9401, HTSUS, in the provision for parts of an automobile seat. In support of your position you make reference to Headquarters Ruling Letter 085609, dated February 2, 1990, which classified 100 percent polyester knit fabric, rectangular in shape, cut to the ultimate consignee's specifications prior to importation, and intended for use in automobile seats, in heading 9401, HTSUS.

Issue:

What is the proper classification for the subject merchandise?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

Chapter 94, HTSUS, provides for miscellaneous manufactured articles. Chapter Note 3(b) states that, "goods described in heading 9404, entered separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods." The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to chapter 94, HTSUS, in addressing Parts states:

> This Chapter only covers parts, whether or not in the rough, of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere.

Heading 9401, HTSUS, provides for seats (other than those of heading 9402) whether or not convertible into beds, and parts thereof. The EN to heading 9401, HTSUS, in reference to "parts" state:

> The heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung), and spiral springs assembled for seat upholstery.
>
> Separately presented cushions and mattresses, sprung, stuffed or internally fitted with any material or of cellular rubber or plastics whether or not covered, are excluded (heading 94.04) even if they are clearly specialised as parts of upholstered seats (e.g., settees, couches, sofas). When these articles are combined with other parts of seats, however, they remain classified in this heading. They also remain in this heading when presented with the seats of which they form part.

First, for a product to qualify for classification under a specified heading, the merchandise must conform to terms of the requisite heading notes, and where applicable, the EN to that heading. In this instance, the EN to both chapter 94 and heading 9401, HTSUS, state that heading 9401 covers identifiable parts of chairs or other seats. In the case of the subject merchandise, the merchandise is "identifiable" as a part in that it is cut to a predetermined size according to the manufacturer's specifications. The subject merchandise is not further processed after importation except for its use as part of an automobile seat, as such we find that it is dedicated to this use. As such, we agree that classification in heading 9401, HTSUS, is warranted. Similarly, we agree with your assertion that the merchandise addressed in HQ 085609, supports your position for classification in heading 9401, HTSUS.

The correct classification for the subject merchandise is in the appropriate subheading of heading 9401, HTSUS. NY D81272 is revoked pursuant to the analysis set forth above.

Holding:

The subject merchandise is classified in heading 9401.90.1080, HTSUSA, which provides for, seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: parts: of seats of a kind used for motor vehicles: other. The applicable general column one rate of duty is "free."

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF A DECORATIVE OVERCAP OR TOPPER FOR A COVERED BEVERAGE CONTAINER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a decorative overcap or topper for a covered beverage cup.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of an article described as "Disney Tomorrowland" toppers, under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 6, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, General Classification Branch (202) 927–3315.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act

of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an article described as "Disney Tomorrowland" topper to a covered beverage cup. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) C86949 dated April 29, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY C86949, issued April 29, 1998, Customs ruled that the "Disney Tomorrowland" topper was classified in subheading 3923.50.0000, HTSUS, which provides in pertinent part for stoppers, lids, caps and other closures, of plastic. The "topper" is a three-dimensional, brightly colored decorative plastic article that is essentially hollow and at its base cylindrical in shape. It is molded in the shape that depicts the primary features of Disney's Tomorrowland theme park, that is, two spaceships carrying passengers, three planets and the distinctive Tomorrowland's red "T" logo among other futuristic objects. There is an opening on one of the planets that can accommodate a drinking straw. This topper is combined, after importation, with a U.S. origin threaded screw-on plastic lid which has a hole in the center to accommodate a straw and a threaded plastic beverage cup of U. S. origin. NY C86949 is set forth as "Attachment A" to this notice. After review and consideration of headings 3923, 3926 and 9503, HTSUS, we are of the opinion

that the "Disney Tomorrowland" topper is not described by heading 3923 as a cup lid because it does not function as a seal or a lid for the particular cups with which they will be marketed. While the topper has a hole that can accommodate a straw and fits snugly over the plastic threaded flat lid, it is intended to serve as a decorative overcap for the actual lid. Thus, it is not properly classified as a cup lid. Also, the topper is not a toy under heading 9503 because it is not designed to be played with, has no manipulative value, and is principally designed to be a promotional or souvenir item of a visit to the Disney theme parks. The topper is intended to form a decorative overcap for the actual lid. We, therefore, have determined that the "Disney Tomorrowland" topper is properly classified in subheading 3926.40.00, HTSUS, as "[o]ther articles of plastic, statuettes and other ornamental articles."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY C86949, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 962447 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 21, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, April 29, 1998.

CLA–2–39:RR:NC:SP:221 C86949
Category: Classification
Tariff No. 3923.50.0000

MR. EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.
601 North Nash Street
El Segundo, CA 90245

Re: The tariff classification of a cup lid from China.

DEAR MR. JORDAN:

In your letter dated April 17, 1998, on behalf of Strottman International, Inc., you requested a tariff classification ruling.

The sample submitted with your letter is a lid which will be used as a promotional decorative cover for beverages sold at the Disney theme parks. The cover measures approximately

4 inches in diameter at the portion where it snaps onto the cup, 5 inches in diameter at its widest point and 4½ inches at its greatest height. It is molded from plastics into a shape which depicts some of the primary features of a portion of the theme park. The shape incorporates a tubular opening for a drinking straw.

You request classification in subheading 9503.90.0045, HTS, which provides for other toys * * * other toys and models. You state that the product "is not intended as a lid, but as a promotional/souvenir item." However, the product is not designed to be a toy that amuses. Though it is a souvenir of a visit to the Disney theme parks, it is a fully functional beverage cup lid.

The applicable subheading for the decorative lid will be 3923.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for stoppers, lids, caps and other closures, of plastics. The rate of duty will be 5.3 percent ad valorem.

Importations of these products might be subject to the provisions of Section 133 of the Customs Regulations if they copy or simulate a trademark, tradename or copyright registered with the United States Customs Service.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212–466–5580.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962447 JRS
Category: Classification
Tariff No. 3926.40

JAMES F. O'HARA, ESQ.
STEIN SHOSTAK SHOSTAK & O'HARA
515 S. Figueroa St., Suite 1200
Los Angeles, CA 90071–3329

Re: "Disneyland" Toppers; Decorative overcaps; Not Other Toys of Heading 9503; Ornamental Articles of Plastics of Heading 3926; Revocation of NY C86949; HQ 961840.

DEAR MR. O'HARA:

This is in reference to your December 16, 1998, letter on behalf of Strottman International, Inc., requesting reconsideration of New York Ruling Letter (NY) C86949 dated April 29, 1998, issued by the Customs National Commodity Specialist Division in New York, concerning the classification of a "Disney Tomorrowland" topper under subheading 3923.50.00, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "stoppers, lids, caps and other closures, of plastics." You also request a ruling on a "Disney Castle" topper which you assert is the same in all material respects (construction, size, shape and purpose) as the "Disney Tomorrowland" topper ruled on in NY C86949. Samples of both toppers were submitted for our review along with the plastic beverage cup and screw-on lid to which they are attached after importation. We have reconsidered NY C86949 and now believe that it is incorrect. This ruling sets forth the correct classification and the analysis therefor.

Facts:

The merchandise at issue, manufactured in China, is decorative toppers for placing over a plastic lid containing a hole for a straw and beverage cup. The plastic cup, lid, and straw are of United States origin. The "Disney Tomorrowland" topper is made out of semi-pliable

hard vinyl plastic molded into the fanciful form displaying some of the primary features of the Tomorrowland portion of Disney's Magic Kingdom amusement park. It is painted with bright colors of gold, copper, silver and blue. This topper is approximately 4 inches in its outside diameter at its base (interior diameter is approximately 3½ inches where it fits over the lid portion of the beverage cup) and approximately 4½ inches at its greatest height. The form is essentially hollow and cylindrical in shape at its base. It depicts two spaceships each carrying two passengers, and having long, silver painted contrails, three varying sized planets encircled by rings, and the trademark logo of Tomorrowland, a red "T," that appears in front of a gold colored circular object in addition to other futuristic objects. A hollow tubular opening is located off center which can accommodate a drinking straw.

The "Disneyland Castle" topper is a decorative, brightly-colored painted mold, made of a semi-pliable hard vinyl plastic, in the shape of the Disney Castle found in Fantasyland that is surrounded by 3-dimensional heads of "Mickey Mouse," "Minnie Mouse," and "Pluto." The article is essentially hollow and its base is cylindrical in shape. It is approximately 4 inches in its outside diameter at its base (interior diameter is approximately 3½ inches where it fits over the lid portion of the beverage cup) and approximately 6 inches at its greatest height. The shape of the castle's cylindrical turret is hollow which creates an opening to accommodate a drinking straw.

The two decorative toppers are part of a Disney promotion to celebrate the modernization of Disneyland's Tomorrowland. You state that these items are designed to be sold to visitors at the Disney theme parks with beverages as a promotional souvenir item. The articles are to be used as a decorative cover for the actual screw-on lids and beverage cups that soft drinks are sold in at the park. Both toppers have a smooth base and are not threaded like the flat plastic lid which is designed to screw on the top of a beverage container.

Issue:

Whether the "Disneyland Toppers" are classified within heading 3923, as lids of plastics; within heading 3926, as other ornamental articles of plastics; or within heading 9503, as other toys.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The HTSUS headings under consideration are as follows:

3923	[a]rticles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
3923.50	[s]toppers, lids, caps and other closures.
* * * * * * *	
3926	[o]ther articles of plastics and articles of other materials of headings 3901 to 3914.
3926.40	[s]tatuettes and other ornamental articles
* * * * * * *	
9503	[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.
9503.90.0045	[o]ther, [o]ther toys and models.

In NY C86949, Customs found that the Disneyland Topper was not designed to be a toy that amuses, noting that the product was intended as a promotional/souvenir item, and concluded it was "a fully functional beverage cup lid" classified under subheading 3923.50.00, HTSUS. You claim that classification as toys under heading 9503, HTSUS, is proper because both toppers are not functional beverage cup lids.

The ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amuse-

ment requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUS. Customs defines principal use as that use which exceeds each other single use of the article.

A close examination of the toppers leads to the conclusion that they are not designed for amusement. The articles function minimally to attract the user to drink the beverage through the straw protruding from the opening in either topper. It is not only that there is some functionality of the article which deprives it of a potential toy classification. Rather, it is that there is no manipulative play value associated with either the Disney Castle or the Disney Tomorrowland toppers. The only "amusing" aspect to one of them is that the Disney Castle topper presents well-known Disney cartoon characters. The heads of the cartoon characters attached to the Disney Castle do not impart the article with inherent play value. The toppers are interesting to look at due to their decorativeness in detail, color and design. The articles would have their longest usefulness, not on top of a beverage container at a theme park, but rather placed for display on a shelf or a desk in plain view as a souvenir of the visit to the theme park. It is our conclusion that the toppers will not be played with because they are principally meant for display and are promotional items or collectibles that are primarily decorative. Because the toppers are not designed to be played with, they are not principally designed to amuse and, therefore, not toys under subheading 9503.90.00, HTSUS. As such, the toppers must be classified in another provision.

The classification of the Disney Tomorrowland topper as a lid in heading 3923, HTSUS, is erroneous. A review of the physical characteristics of the topper reveals that it cannot function as a lid. The diameter of the topper is larger than the diameter of the cup, and the topper has no threaded feature which would permit it to be screwed on to the cup. If a topper were to be so used in place of the actual flat screw-on plastic lid, it would not fit securely on to the cup and would not prevent any liquid in the cup from leaking out due to the smoothness of its base. Thus, the topper can only be used with the screw-on cup lid in place on the beverage cup, and in that configuration the topper does not function as a lid or seal, but as a decorative overcap or topper.

Without the decorative Disney topper, the specially shaped Disneyland beverage container, which consists of a 8¾ inch tall plastic cup with a picturesque colored decal of the various parts of the theme park adhered to it (i.e., Frontierland, Space mountain, Splash mountain, Fantasyland, etc.) and the screw-on lid is a complete article. Although the toppers are sized for the particular cups with which they will be sold, the toppers do not have to be used to have a fully functioning Disnelyland beverage container. The Disneyland beverage cup and lid are complete and fully capable of holding and dispensing a beverage with a straw without the use of a decorative topper.

Inasmuch as the topper cannot function as a lid for the particular Disneyland cup due to its design (i.e., no threaded base), it is clear that the topper is intended to form a decorative topper or overcap for the actual lid of the cup. Thus, the terms of heading 3923 do not describe the topper, and classification under subheading 3923.50.00, HTSUS, is inappropriate.

Heading 3926, HTSUS, as the residual provision for plastics, could describe most articles of plastics not elsewhere specified or included. Since the topper is not described by the toys provision of heading 9503 and is not described by heading 3923, it falls by default into heading 3926. As stated, the toppers are promotional items or collectibles that are decorative and meant for display. The holes in the toppers for straws are unobtrusive in their placement and fit well in the overall design. The primary purpose of the Disneyland toppers is not to complete the design of the Disneyland beverage container, but to serve as a promotional or souvenir item to take home at the conclusion of the trip and set out for display. The toppers are decorative plastic articles that could be offered for sale apart from the use as an adjunct to the Disneyland beverage container. As such, the Disney toppers are provided for at the subheading level in 3926.40 as an ornamental article of plastic rather than at the subheading level of 3926.90.98 as other articles of plastic, other.

We find that the instant toppers are provided for under subheading 3926.40.00, HTSUS, as "[o]ther articles of plastic * * *[s]tatuettes and other ornamental articles." See HQ 961840, dated May 7, 1999, for a similar ruling.

Holding:

The Disneyland Toppers are classifiable under subheading 3926.40.00, HTSUS, as "[o]ther articles of plastics * * *[s]tatuettes and other ornamental articles."

Effect on Other Rulings:

NY C86949 dated April 29, 1998, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF THE CHEMICAL COMPOUND "TRIETHYLENE GLYCOL, BIS (ETHYLHEXANOATE)"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of the chemical compound "triethylene glycol, bis(ethylhexanoate)."

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of the chemical compound "triethylene glycol, bis(ethylhexanoate)," also known as "glycol di-2-ethyl hexanoate" and "Santicizer 2075," under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published in Vol. 33, No. 20 of the CUSTOMS BULLETIN dated May 19, 1999.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**in-**

formed compliance" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to Customs obligations, a notice of proposed revocation of New York Ruling (NY) C86257 was published in Vol. 33, No. 20 of the CUSTOMS BULLETIN dated May 19, 1999. No comments were received.

As stated in the proposed notice this revocation action will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In NY C86257, Customs ruled that triethylene glycol, bis(ethylhexanoate) was classified under subheading 2918.90.50, HTSUS, as a carboxylic acid with additional acid function. Upon review of this ruling, Customs has discovered an error in the classification of triethylene glycol, bis(ethylhexanoate). This product should have been classified in subheading 2915.90.50, HTSUS, as an ester of a saturated acyclic monocarboxylic acid.

Customs is revoking NY C86257 to reflect the proper classification of triethylene glycol, bis(ethylhexanoate). Headquarters Ruling Letter

(HQ) 962269, revoking NY C86257, is set forth as an Attachment to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Dated: June 22, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, June 22, 1999.

CLA-2 RR:CR:GC 962269 MGM
Category: Classification
Tariff No. 2915.90.50

MS. MARTHA A. PIERCE
IMPORT SERVICES MANAGER
SOLUTIA INC.
10300 Olive Bouleveard
St. Louis, MO 63166-6760

Re: Triethylene glycol, bis(ethylhexanoate) (CAS # 94-28-0); NY C86257 revoked.

DEAR MS. PIERCE:

This is in response to your letter of August 11, 1998, to the Director, National Commodity Specialist Division, New York, N.Y., seeking reconsideration of New York Ruling Letter (NY) C86257, issued to you on June 30, 1998, in response to your letter dated April 3, 1998, concerning the tariff classification of the chemical compound triethylene glycol, bis(ethylhexanoate). In NY C86257, Customs ruled that triethylene glycol, bis(ethylhexanoate) would be properly classified under heading 2918, Harmonized Tariff Schedule of the United States (HTSUS), which provides for carboxylic acids with additional oxygen function. Upon further review of NY C86257, Customs has discovered an error in the classification of triethylene glycol, bis(ethylhexanoate). This ruling sets forth the correct classification and the analysis therefor.

A notice of proposed revocation of New York Ruling Letter (NY) C86257 was published in the CUSTOMS BULLETIN on May 19, 1999, Vol. 33, No. 20. No comments were received.

Facts:

Triethylene glycol, bis(ethylhexanoate), also known as glycol di-2-ethyl hexanoate and "Santicizer 2075," has the chemical formula $C_{22}H_{42}O_6$. It has two ethyl hexyl substituents linked by ester groups to triethylene glycol. Triethylene glycol, bis(ethylhexanoate) is formed by reaction of 2-ethylhexanoic acid with triethylene glycol in a 2:1 ratio. Water is formed as a byproduct of the esterification. The merchandise is used in the polymer chemistry industry as a plasticizer, that is, an additive which makes otherwise rigid plastics more flexible. Allcock & Lampe, *Contemporary Polymer Chemistry*, 2nd ed at 11, 424.

Issue:

What is the classification of triethylene glycol, bis(ethylhexanoate)?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

Esters of acid-function organic compounds of subchapters I to VII of Chapter 29, HTSUS, with organic compounds of these subchapters are to be classified with that compound which is classsified in the heading placed last in numerical order in these subchapters. Note 5(a), Ch. 29, HTSUS. Triethylene glycol, bis(ethylhexanoate) is an ester of ethylhexanoic acid and triethylene glycol. Triethylene glycol by itself is classified in heading 2909, HTSUS, (subchapter IV) as an ether-alcohol, while ethylhexanoic acid by itself is classified in heading 2915, HTSUS, (subchapter VII) as a saturated acyclic monocarboxylic acid. As heading 2915, HTSUS, occurs after heading 2909, HTSUS, in numerical order, triethylene glycol, bis(ethylhexanoate) is classified in heading 2915, HTSUS.

Within heading 2915, HTSUS, triethylene glycol, bis(ethylhexanoate) is not described by any of the specific provisions, therefore it falls to the residual provision, subheading 2915.90. Within this residual provision triethylene glycol, bis(ethylhexanoate) is classified as a non-aromatic, non-acidic compound.

Holding:

Triethylene glycol, bis(ethylhexanoate) is properly classified in subheading 2915.90.50, HTSUS.

NY C86257 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

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